

UPMARKET DEVELOPMENT SDN BHD**A****v.****SRIERA DEVELOPMENT SDN BHD**

COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
MOHD HISHAMUDIN YUNUS JCA
KANG HWEE GEE JCA
[CIVIL APPEAL NO: B-02-897-2007]
29 OCTOBER 2009

B**C**

LAND LAW: *Caveat - Removal of - Appeal against - Failure to “express” caveat to bind only small portion of lot in Form 19B - Whether fatal - Whether appellant had caveatable interest to caveat respondent’s land - Whether appeal dismissed - National Land Code, ss. 323, 327(1)*

D

This was an appeal by the appellant against the decision of the High Court in allowing the plaintiff respondent’s application under s. 323 of the National Land Code to remove a caveat lodged by the appellant. The appellant’s land adjoined Lot PT 5105 whose proprietor was Zuhrah Bina Sdn Bhd (“Zuhrah Bina”), a construction firm, that had entered into a joint venture agreement with the respondent, a housing developer, to develop the said lot into a housing estate. The appellant alleged that the respondent had obtained a development order from the relevant authority based on the title of Lot PT 5105, a provisional title which had not been properly surveyed to define its exact boundary. The boundary of Lot PT 5105 had overlapped a number of lots in the appellant’s land. This notwithstanding, the respondent began development on Lot PT 5105. To protect its interest pending the resolution of the dispute by the court, the appellant lodged a caveat on Lot PT 5105. The respondent applied under s. 327(1) of the National Land Code to remove the caveat as a person “aggrieved by the existence of the caveat” by reason of its interest in the land under the joint venture agreement. The High Court allowed the respondent’s application and ordered the caveat removed. Hence, this appeal.

E**F****G****H****I**

A Held (dismissing the appeal with costs)**Per Kang Hwee Gee JCA delivering the judgment of the court:**

- (1) To sustain a caveat on land in which the caveator is claiming an interest in a part thereof, it was incumbent upon him under s. 323(2) of the National Land Code to state in Form 19B ‘whether the caveat is to be expressed to bind the land itself or an undivided share in the land or a particular interest only.’ In Form 19B which the appellant submitted, while it described the nature of its claim by identifying clearly the lots affected by the overlapping and had explained that the caveat applied for on Lot PT 5105 was to protect the overlapped portion, it failed to “express” therein that the caveat was to bind only that small portion of Lot PT 5105 which overlapped the appellant’s lots. By failing to do so, it was clear that the appellant had caveated that portion of the respondent’s land which it had no caveatable interest. The omission was fatal. The judge was therefore right in allowing the respondent’s application to remove the appellant’s caveat. (para 14)

E Bahasa Malaysia Translation Of Headnotes

- Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi membenarkan permohonan plaintif responden di bawah s. 323 Kanun Tanah Negara untuk mengeluarkan kaveat yang diletakkan oleh perayu. Tanah perayu bersambungan dengan Lot PT 5105 yang dimiliki oleh Zuhrah Bina Sdn Bhd (“Zuhrah Bina”), sebuah firma pembinaan, yang telah memasuki perjanjian perniagaan bersama dengan responden, pemaju perumahan, untuk memajukan lot tersebut menjadi estet perumahan. Perayu mendakwa bahawa responden telah memperolehi perintah pembangunan daripada pihak berkuasa berdasarkan hakmilik Lot PT 5105, hakmilik sementara yang tidak ditinjau dengan cara teratur untuk mentakrifkan sempadan tanah yang sebenar. Sempadan Lot PT 5105 bertindihan dengan beberapa lot tanah perayu. Walaupun begitu, responden memulakan kerja-kerja memajukan Lot PT 5105. Untuk melindungi kepentingannya sementara menunggu resolusi pertikaian oleh mahkamah, perayu telah meletakkan kaveat atas Lot PT 5105. Responden memohon di bawah s. 327(1) Kanun Tanah Negara untuk mengeluarkan kaveat sebagai seorang “menjadi terkilan oleh kewujudan kaveat tersebut” dengan alasan kepentingannya di dalam tanah di bawah perjanjian perniagaan bersama. Mahkamah Tinggi membenarkan permohonan responden dan memerintahkan supaya kaveat dikeluarkan. Oleh itu, rayuan ini.

Diputuskan (menolak rayuan dengan kos)

A

Oleh Kang Hwee Gee HMR menyampaikan penghakiman mahkamah:

- (1) Untuk mempertahankan kaveat ke atas tanah di mana pengkaveat menuntut kepentingan sebahagiannya, ia adalah wajib untuk beliau di bawah s. 323(2) Kanun Tanah Negara untuk menyatakan di dalam Borang 19B 'sama ada kaveat dinyatakan untuk diikat keseluruhan tanah atau kepentingan pembahagian tanah tersebut yang tidak terbahagi atau untuk mengikat kepentingan tertentu.' Dalam borang 19B yang dikemukakan oleh perayu, walaupun ia telah memperikan sifat tuntutan dengan mengenalpasti dengan jelas lot-lot yang terlibat dengan pertindihan dan telah memberi penjelasan kaveat yang dipohon ke atas Lot PT 5105 adalah untuk melindungi bahagian yang ditindih, ia gagal "menyatakan" bahawa kaveat hanya untuk mengikat sebahagian kecil Lot PT 5105 yang bertindihan dengan lot-lot perayu. Kegagalan berbuat demikian, ia adalah jelas bahawa perayu telah meletak kaveat ke atas bahagian tanah responden yang perayu tidak mempunyai kepentingan berkaveat. Peninggalan berbuat demikian adalah fatal kepada kes. Hakim adalah betul apabila membenarkan permohonan responden untuk mengeluarkan kaveat.

B

C

D

E

Case(s) referred to:*Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285 FC (**refd**)*N Vangedasalam v. Mahadevan & Anor* [1976] 1 LNS 80 FC (**refd**)*Tan Heng Poh v. Tan Boon Thong & Ors* [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316 SC (**refd**)

F

Legislation referred to:

National Land Code 1965, ss. 322(1), 323(1)(a), (2), 327(1)

G

*For the appellant - S Selvarajah (LS Leonard with him); M/s Fernandez & Selvarajah**For the respondent - Jenny Lee (Masitah Alias with him); M/s Hazidin Chan**[Appeal from High Court, Shah Alam; Originating Summons No: B-02-897-2007]*

H

Reported by Suhainah Wahiduddin

I

A

JUDGMENT

Kang Hwee Gee JCA:

- B [1] This is an appeal by the appellant against the decision of the High Court of Shah Alam in allowing the plaintiff respondent's application under s. 323 of the National Land Code 1965 to remove a caveat lodged by the appellant.
- C [2] The appellant was the registered proprietor of several pieces of land which was derived from the subdivision of a larger lot known as Lot No. 16245, Mukim Petaling, Daerah Kuala Lumpur.
- D [3] The appellant's land adjoined Lot PT 5105 whose proprietor was Zuhrah Bina Sdn Bhd ("Zuhrah Bina"), a construction firm. Zuhrah Bina had entered into a joint venture agreement with the respondent, a housing developer, to develop Lot PT 5105 into a housing estate.
- E [4] The appellant alleged that the respondent had obtained a development order from the relevant authority based on the title of Lot PT 5105, a provisional title which had not been properly surveyed to define its exact boundary. The boundary of Lot PT 5105 as shown in the plan annexed to the title had overlapped a number of lots of the appellant's land.
- F [5] This notwithstanding, the respondent began development on Lot PT 5105 relying on the demarcation of boundary in the provisional title to demarcate its area of development. It had laid sewage pipes, constructed manholes and driven concrete piles on the lots claimed by the appellant.
- G [6] To protect its interest pending the resolution of the dispute by the court, the appellant lodged a caveat on Lot PT 5105
- H [7] The respondent applied under s. 327(1) of the National Land Code to remove the caveat as a person "aggrieved by the existence of the caveat" by reason of its interest in the land under the joint venture agreement it entered into with Zuhrah Bina.
- [8] The High Court allowed the respondent's application and ordered the caveat removed.
- I [9] Hence this appeal

[10] A number of issues were raised in arguments at the High Court and in the written submissions of the parties before us. But at this hearing before us, the appellant confined its appeal to only one broad issue of whether the appellant had a caveatable interest to caveat the respondent's land.

A

[11] We are convinced that the appellant had a caveatable interest to lodge a caveat on Lot PT 5101 under s. 323(1)(a) of the National Land Code in as much as the respondent was entitled to apply for the caveat to be removed as a person aggrieved.

B

[12] We are satisfied that the appellant had provided sufficient *prima facie* evidence that a portion of the appellant's land may have been trapped within the boundary of Lot PT 5105 by the production of the final survey plans (the "Pelan Akui") which were approved by the Pengarah Ukur dan Pemetaan Selangor for both the lots indicating the overlapping of the area in Lot Pt 5105 into the appellant's lands.

C

D

[13] It is therefore clear to us that the appellant's interest in Lot PT 5105 was merely on the portion of the land that overlapped the appellant's lots.

E

[14] The law is now settled. To sustain a caveat on land in which the caveator is claiming an interest in a part thereof, it is incumbent upon him under s. 323(2) of the National Land Code to state in Form 19B:

F

... the nature of the claim on which his application is based, **and whether the caveat is to be expressed to bind the land itself** or an undivided share in the land **or a particular interest only**.
(emphasis added)

G

[15] Practising conveyancers may well be reminded of what Suffian LP said in *N Vangedaselam v. Mahadevan & Anor* [1976] 1 LNS 80; [1976] 2 MLJ 161 at 163, pertaining to the entry of a caveat of a part of a land under s. 323(2) of the National Land Code:

... you either caveat the whole land or not at all, and that if you claim a registrable interest in a portion, you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim.

H

I

- A [16] The law on this point was rendered somewhat uncertain when a proviso was added to s. 322(1) of the National Land Code by the National Land Code (Amendment) Act 1984 (Act A587) that came into force on 25 March 1985 which provides that “such a caveat shall not be capable of being entered in respect of a part of the land”, which created some uncertainty over the operative aspect of s. 323(2). This proviso was however subsequently deleted by the National Land Code (Amendment) Act 2001 (Act A1104).

- C [17] The Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285 has since ruled that the proviso to s. 322(1) was purely declaratory of the principles enunciated by Suffian LP in *Vangedaselam, supra*, that a person who claims a registrable interest in a portion of land may caveat the whole land, provided the caveat is expressly limited to protect only that claim, which must be an interest recognized under the Code as being either registrable or entitled to protection.

- E [18] The Federal Court went further to endorse what Suffian LP said of a caveator who wishes to enter a private caveat to protect only a particular interest in land in the following passages of his judgment:

At p. 297:

- F when applying for entry of a caveat he should so state in Form 19B in para. 1, and in para. 2 he should give the grounds of his claim. (He should not claim a caveat to be expressed to bind the land itself.) He should also cause to be inserted in Form 19A a description of the particular interest claimed and a description of the effect of the caveat.

- G And at p. 297:

- H when applying for the caveat you state the nature of the registrable interest you claim, you do not use mere general words, you do not claim more than what is warranted, the caveat sufficiently states the quantum of the estate or interest which you claim, and you limit the prohibition of your caveat to such dealings as your claim, if well founded, entitles you to forbid.

- I [19] We have examined Form 19B which the appellant submitted with care. We are convinced that while the appellant had described the nature of its claim by identifying clearly the lots affected by the overlapping and had explained that the caveat applied for on Lot

PT 5105 was to protect the overlapped portion, it failed to “express” therein that the caveat was to bind only that small portion of Lot PT 5105 which overlapped the appellant’s lots. **A**

[20] By failing to do so, it is clear that the appellant had caveated that portion of the respondent’s land which it had no caveatable interest. **B**

[21] Needless to say, the omission was fatal. As Mohd Azmi SCJ said in *Tan Heng Poh v. Tan Boon Thong & Ors* [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316 at 321: **C**

Since the entry of a caveat was a blot on the title, we agreed with the view that once the caveat was found to be legally unsustainable, that should be the end of the matter, and the caveatee was entitled to have the caveat removed where the caveator’s claim was baseless frivolous and vexatious. **D**

[22] The learned judge was therefore right in allowing the respondent’s application to remove the appellant’s caveat.

[23] For the foregoing reasons, we dismissed the appeal with costs. **E**

[24] My brother judges have read the draft of this judgment and have agreed with the contents herein. **F**

G**H****I**